

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

PHILLIP ANNESE,

Plaintiff,

**5:12-cv-412
(GLS/TWD)**

v.

SODEXO, INC.,

Defendant.

SUMMARY ORDER

On March 12, 2012, defendant Sodexo, Inc. filed a motion to dismiss under Fed. R. Civ. P. 12(b)(6), arguing that plaintiff Phillip Annese's breach of contract claim fails as a matter of law. (See *generally* Dkt. No. 3.) In response, Annese filed, *inter alia*, a cross-motion to amend his Complaint, in which he seeks to add causes of action for promissory estoppel, fraud and negligent misrepresentation. (See *generally* Dkt. No. 7.) Having reviewed the parties' submissions, the court concludes that leave to amend is appropriate. See Fed. R. Civ. P. 15(a)(2). It follows that Sodexo's motion to dismiss is denied without prejudice to its right to renew its motion after Annese files his Amended Complaint.

ACCORDINGLY, it is hereby

ORDERED that Annese's cross-motion to amend (Dkt. No. 7) is

GRANTED; and it is further

ORDERED that Annese shall—in accordance with requirements of, *inter alia*, Fed. R. Civ. P. 8(a) and N.D.N.Y. L.R. 7.1(a)(4)—file an Amended Complaint within thirty (30) days of this order; and it is further

ORDERED that Sodexo's motion to dismiss (Dkt. No. 3) is **DENIED** with leave to renew within fourteen (14) days after the filing of the Amended Complaint; and it is further

ORDERED that if Sodexo elects not to challenge the sufficiency of the Amended Complaint, it must file the appropriate responsive pleadings within the time allotted by the rules; and it is further

ORDERED that the parties shall contact Magistrate Judge Dancks to schedule further proceedings in accordance with this order; and it is further

ORDERED that the Clerk provide a copy of this Summary Order to the parties.

IT IS SO ORDERED.

May 8, 2012
Albany, New York



Gary L. Sharpe
Chief Judge
U.S. District Court